

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

JOSEPH TROY WILSON, SR.,)	
)	
Plaintiff,)	
)	
v.)	No. 4:14-CV-1800-CDP
)	
DAN BULLOCK, et al.,)	
)	
Defendants.)	

MEMORANDUM AND ORDER

This matter is before the Court on review of plaintiff's second amended complaint [Doc. 10]. For the reasons stated below, this action will be dismissed under 28 U.S.C. § 1915(e)(2)(B).

28 U.S.C. § 1915(e)

Pursuant to 28 U.S.C. § 1915(e)(2)(B), the Court must dismiss a complaint filed in forma pauperis if the action is frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief from a defendant who is immune from such relief. An action is frivolous if it "lacks an arguable basis in either law or fact." *Neitzke v. Williams*, 490 U.S. 319, 328 (1989). An action is malicious if it is undertaken for the purpose of harassing the named defendants and not for the purpose of vindicating a cognizable right. *Spencer v. Rhodes*, 656 F. Supp. 458, 461-63 (E.D.N.C. 1987), *aff'd* 826 F.2d 1059 (4th Cir. 1987). An

action fails to state a claim upon which relief can be granted if it does not plead "enough facts to state a claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544,570 (2007).

To determine whether an action fails to state a claim upon which relief can be granted, the Court must engage in a two-step inquiry. First, the Court must identify the allegations in the complaint that are not entitled to the assumption of truth. *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1950-51 (2009). These include "legal conclusions" and "[t]hreadbare recitals of the elements of a cause of action [that are] supported by mere conclusory statements." *Id.* at 1949. Second, the Court must determine whether the complaint states a plausible claim for relief. *Id.* at 1950-51. This is a "context-specific task that requires the reviewing court to draw on its judicial experience and common sense." *Id.* at 1950. The plaintiff is required to plead facts that show more than the "mere possibility of misconduct." *Id.* The Court must review the factual allegations in the complaint "to determine if they plausibly suggest an entitlement to relief." *Id.* at 1951. When faced with alternative explanations for the alleged misconduct, the Court may exercise its judgment in determining whether plaintiff's conclusion is the most plausible or whether it is more likely that no misconduct occurred. *Id.* at 1950, 51-52.

Moreover, in reviewing a pro se complaint under § 1915(e)(2)(B), the Court must give the complaint the benefit of a liberal construction. *Haines v. Kerner*, 404

U.S. 519, 520 (1972). The Court must also weigh all factual allegations in favor of the plaintiff, unless the facts alleged are clearly baseless. *Denton v. Hernandez*, 504 U.S. 25, 32 (1992).

The Second Amended Complaint

Plaintiff, an inmate at the Eastern Reception Diagnostic and Correctional Center (“ERDCC”), seeks injunctive relief in this 42 U.S.C. § 1983 action against defendants Dan Bullock (Sheriff, St. Francois County Jail), Dennis Smith (Sergeant, St. Francois County Jail), and Hardy White (Corporal, St. Francois County Jail). Plaintiff’s allegations arise out of his confinement at the St. Francois County Jail (“Jail”). Plaintiff generally alleges that the mail policy at the Jail “has personally affected [him]. Force [sic] to use post cards as opposed to closed letters.” Plaintiff states this has caused him undue hardship. In addition, plaintiff complains that the Jail is overcrowded and unsanitary, and he states that the attorney-client meeting room is not private. The Court notes that plaintiff is no longer confined in St. Francois County; he notified the Court of his transfer to ERDCC in February 2015.

Discussion

To state a claim under § 1983, a plaintiff must allege that (1) the defendant acted under color of state law, and (2) defendant's alleged conduct deprived the plaintiff of a constitutionally-protected federal right. *Schmidt v. City of Bella Villa*, 557 F.3d 564, 571 (8th Cir. 2009). In the instant case, plaintiff has failed to allege

that any of the named defendants personally participated in the violation of his constitutional rights. *See Jeffers v. Gomez*, 267 F.3d 895, 915 (9th Cir. 2001) (§ 1983 liability arises only upon a showing of personal participation by defendant); *Ellis v. Norris*, 179 F.3d 1078, 1079 (8th Cir. 1999) (§ 1983 claimant must allege facts supporting individual defendant's personal involvement or responsibility for unconstitutional action); *Madewell v. Roberts*, 909 F.2d 1203, 1208 (8th Cir. 1990) (liability under § 1983 requires a causal link to, and direct responsibility for, the alleged deprivation of rights); *Martin v. Sargent*, 780 F.2d 1334, 1338 (8th Cir. 1985) (claim not cognizable under § 1983 where plaintiff fails to allege defendant was personally involved in or directly responsible for incidents that injured plaintiff). Because plaintiff has not set forth any facts indicating that the defendants in this action were directly involved in or personally responsible for the violation of his constitutional rights, the Court will dismiss this action as legally frivolous.

As additional grounds for dismissing this action, the Court notes that plaintiff is requesting only injunctive relief for the alleged deprivation of his constitutional rights while confined at the St. Francois County Jail. Plaintiff is now incarcerated at ERDCC. When a prisoner has been transferred to a new correctional facility, his claims for injunctive and declaratory relief are properly denied, as moot. *See Gladson v. Iowa Dep't of Corrections*, 551 F.3d 825, 835 (8th Cir.2009); *Pratt v. Correctional Corp. of America*, 267 Fed. Appx. 482 (8th Cir.2008); *Smith v.*

Hundley, 190 F.3d 852, 855 (8th Cir.1999). For these reasons, this action will be dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B).

Accordingly,

IT IS HEREBY ORDERED that the Clerk shall not issue process or cause process to issue in this action, because plaintiff's allegations are legally frivolous and fail to state a claim upon which relief may be granted. *See* 28 U.S.C. § 1915(e)(2)(B).

A separate Order of Dismissal shall accompany this Memorandum and Order.

Dated this 3rd day of August, 2015.


UNITED STATES DISTRICT JUDGE